

18-1269 RODRIGUEZ V. FEDERAL DEPOSIT INSURANCE CORPORATION

DECISION BELOW: 914 F.3d 1262

LOWER COURT CASE NUMBER: 17-1281

QUESTION PRESENTED:

The Internal Revenue Code permits affiliated corporate groups-consisting of a parent corporation and its subsidiaries-to file a consolidated income tax return. 26 U.S.C. §§ 1501, 1504(a). When the Internal Revenue Service issues a tax refund to an affiliated group, that refund is made "directly to and in the name of" the parent corporation, even if the refund arises in whole or in part from the losses of a corporate subsidiary. 26 C.F.R. § 1.1502-77(c), (d)(5).

Three Circuits, including the court below, have adopted a federal common law rule known as the "*Bob Richards* rule," under which a tax refund paid to an affiliated group is presumed to belong to the corporate subsidiary whose losses gave rise to the refund unless the parties clearly agree otherwise. Four Circuits reject that rule, and instead determine ownership of a tax refund based on applicable state law.

The question presented is:

Whether courts should determine ownership of a tax refund paid to an affiliated group based on the federal common law "*Bob Richards* rule," as three Circuits hold, or based on the law of the relevant State, as four Circuits hold.

CERT. GRANTED 6/28/2019